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October 20, 1960
Opinion No. 60-66

REQUESTED BY: JAMES A. RORK, ADMINISTRATOR-DIRECTOR
Employment Service Division, Employment
Security Commission of Arizona

OPINION BY: WADE CHURCH, The Attorney General

QUESTION: In what manner may the Employment Security
Commission dispose of a building acquired by
it pursuant to the provisions of Section 23-
649, A.R.S.?

CONCLUSION: Legislative Act.

A.R.S. § 23-649 reads as follows:

"A. The commission may acquire for and in the name of the state by term purchase agreement such lands and buildings upon such terms and conditions as may be approved by the United States department of labor or such other federal department or agency performing such functions for the purpose of providing office space for the commission at such places as the commission finds necessary and suitable.

"B. An agreement made for the purchase of the premises mentioned in subsection A of this section shall be subject to the approval of the attorney general as to form and as to title thereto and shall not subject the state to liability for payment of the purchase price or any part or portion thereof except from monies allocated to the state by the United States department of labor for the administration of this chapter.

"C. All monies received from the United States for the payments authorized by this section for lands and buildings shall be deposited in the employment security administration fund in the state treasury and are appropriated therefrom for purposes of this chapter. Notwithstanding any provision of this chapter, monies received from the unemployment trust fund pursuant to section 903 of the social security act, as amended, are not liable or subject to appropriation, except in accordance with the provisions of subsection E of section 23-704.

"D. If the premises are purchased pursuant to this chapter, the employment security commission

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or such other department of the state performing its functions, shall be housed therein, or if it is desirable to move the employment security commission, other substantially similar space will be furnished by the state to the commission without further payment therefor by the United States."

The overall intent of the foregoing statute is to the effect that the Employment Security Commission of Arizona may acquire by term purchase agreement any lands or buildings for the purpose of providing necessary and suitable office space, conditioned, however, upon the concurrence of three things, to-wit: (1) approval of the terms and conditions of the agreement by the United States department of labor or such other federal department or agency performing such functions, (2) approval of the agreement by the attorney general as to form and as to title thereto; and (3) the absence of the agreement to subject the state of Arizona to personal liability for the purchase price, or any part thereof, except from federal monies allocated to the state for the administration of the Employment Security Law.

The Commission clearly has authority to acquire lands or buildings as long as the afore-enumerated three conditions are met. However, the problem here is, once they have acquired it, have they the right to dispose of it.

State agencies are creatures of statute. Their powers flow from the statute creating them. As in any other agency relationship, they have express powers and implied powers. The express powers are those contained in the statute; the implied powers are those that arise as a necessary or reasonable implication in order to effectuate other authority expressly conferred. In the question presented, as heretofore noted, the Commission has express authority to acquire; however, no express authority to dispose of, is found in the Employment Security Law. Hence, by being expressly authorized to acquire, is the Commission given the implied authority to dispose of? The answer to this question must be answered in the negative.

The weight of authority is to the effect that where the power to sell real estate is not expressly given to an agent, no such power will be implied (2 Am. Jur. Agency, § 140). Also, in § 18-155A, A.R.S., the State Highway Commission is given the express power to acquire real property; paragraph

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C of the same section expressly authorizes the Highway Commission to dispose of real property. From this wording, it would appear that our Legislature recognized the distinction between express authority to acquire, and express authority to dispose of. By including it in the powers dealing with the Highway Commission and excluding it from the powers dealing with the Employment Security Commission, it would indicate that the latter has no authority to dispose of real property.

Further, there is no authority contained in any other state agency to dispose of Employment Security Commission property. The State Land Department concerns itself with so-called "institutional lands" only. The State Planning and Building Commission, which has the authority to dispose of surplus real property, has no jurisdiction over Employment Security Commission projects (§ 41-571.14, A.R.S.).

It is, therefore, the conclusion of this office that the building in question can only be disposed of pursuant to an Act of the Legislature of the State of Arizona.

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